

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DAVID HARROD, JR.</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 205,956 & 216,023
<b>PRESBYTERIAN MANORS</b>	)	
<b>OF MID-AMERICA, INC.</b>	)	
Respondent	)	
Self-Insured	)	

**ORDER**

Claimant appealed the Award dated May 29, 1998, entered by Administrative Law Judge Jon L. Frobish.

**APPEARANCES**

Robert R. Lee of Wichita, Kansas, appeared for the claimant. Kathleen N. Wohlgemuth of Wichita, Kansas, appeared for the respondent.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

Judge Frobish found that claimant failed to provide respondent with timely notice of accidental injury and, therefore, denied the request for benefits. Claimant requested the Appeals Board to review the following issues:

- (1) Did claimant provide respondent with timely notice of accidental injury?

Claimant contends that on the night of the June 15, 1995 incident, he told his charge nurse, Sylvia Ellison, that he injured his right wrist when he was attempting to bring a resident back into the nursing home. Claimant contends that testimony is uncontroverted as Ms. Ellison did not testify to rebut it.

Also, claimant contends that his wrist progressively worsened when he continued to work after the June 1995 incident. Therefore, claimant alleges a second work-related injury occurred due to a series of accidents from June 15, 1995, through August 4, 1996.

(2) What is the nature and extent of injury?

Claimant contends the preexisting arthritic condition in his wrist was asymptomatic and, therefore, did not constitute an impairment as defined by the AMA Guides to the Evaluation of Permanent Impairment. Therefore, claimant contends he either has a 66 percent or 74 percent functional impairment to the right upper extremity depending upon which edition of the AMA Guides is applicable.

**FINDINGS OF FACT**

After reviewing the entire record, the Appeals Board finds:

(1) Mr. Harrod began working for Presbyterian Manors in January 1994. He alleges he initially injured his right wrist while preventing a resident with Alzheimer's disease from leaving the nursing home on June 15, 1995. Mr. Harrod first filed an Application for Hearing with the Director in October 1995 alleging a date of accident of "06-15-95 - present." That claim was assigned Docket No. 205,956. In August 1996, Mr. Harrod filed his second Application for Hearing alleging an August 4, 1996 accident. That claim was assigned Docket No. 216,023.

(2) At the preliminary hearing held in December 1995, Mr. Harrod testified that Sylvia Little was his charge nurse and supervisor when the June 15, 1995 incident occurred. But at the regular hearing held in January 1998, he testified that another charge nurse, Sylvia Ellison, was his supervisor that night. Based upon Sylvia Little's testimony, the Appeals Board finds Mr. Harrod's charge nurse and supervisor at the time of the incident was Sylvia Little.

(3) At the preliminary hearing, Mr. Harrod testified that he initially sought medical treatment from his personal physician in September 1995. But at the regular hearing, he testified that he didn't receive medical treatment for his wrist until August 4, 1996. Based upon the office notes from George L. Lucas, M.D., the surgeon who performed three surgeries on Mr. Harrod's right wrist, the Appeals Board finds Mr. Harrod first sought medical treatment in September 1995.

(4) Dr. Lucas' office notes indicate he began treating Mr. Harrod on September 25, 1995. The doctor performed the first surgery on Mr. Harrod's wrist in January 1996. In July 1996, the doctor released Mr. Harrod to return to one-handed work.

(5) After determining the first fusion did not take, Dr. Lucas scheduled a second attempt for August 13, 1996. But before that date, Mr. Harrod returned to Dr. Lucas on August 5, 1996, with additional wrist complaints and with a history that he injured his wrist at work the night before while lifting a resident.

(6) According to the medical report of Mr. Harrod's expert medical witness, Pedro A. Murati, M.D., Mr. Harrod jammed his right index finger while working on August 4, 1996.

(7) At the regular hearing, when Mr. Harrod was asked about an August 4, 1996, incident, he could not identify any.

(8) Comparing his inconsistent testimony with the records that are in evidence, the Appeals Board finds that Mr. Harrod's memory is inaccurate. Therefore, the Appeals Board agrees with Judge Frobish that the testimonies of Sylvia Little and Tiffany Marten are more credible.

(9) According to Ms. Little and Ms. Marten, Mr. Harrod did not notify Presbyterian Manor of a work-related accident involving his wrist until September 19, 1995. That testimony is persuasive.

(10) The record indicates Mr. Harrod now has a permanent functional impairment to the right upper extremity as a result of the arthritic condition in his wrist and the three fusion attempts. But the record does not establish what part of that permanent functional impairment is related to the June 15, 1995, incident, and what part is attributable to any injury that occurred after that date. The record also fails to establish that Mr. Harrod sustained additional injury or impairment as a result of the work activities he performed for Presbyterian Manor after June 15, 1995.

#### **CONCLUSIONS OF LAW**

The Award denying benefits should be affirmed.

(1) An injured worker is required to provide the employer notice of an accidental injury within either 10 days of its occurrence or within 75 days if the worker can establish that the failure to provide notice within 10 days was due to just cause.<sup>1</sup>

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<sup>1</sup> K.S.A. 44-520.

(2) As indicated above, Mr. Harrod first notified Presbyterian Manor of his accidental injury on September 15, 1995, which is more than 75 days after the June 15, 1995 incident. Therefore, Mr. Harrod failed to provide timely notice for that accident.

(3) The evidence fails to establish that Mr. Harrod sustained additional injury or impairment after June 15, 1995. Therefore, Mr. Harrod has failed to satisfy his burden of proving accidental injury arising out of and in the course of employment for which timely notice was provided. Although the medical records indicate an incident did occur at work on August 4, 1996, and Presbyterian Manor admitted that accident, the record fails to establish that the accident caused any permanent injury or impairment.

**AWARD**

**WHEREFORE**, the Appeals Board affirms the Award denying benefits dated May 29, 1998, entered by Administrative Law Judge Jon L. Frobish.

Dated this \_\_\_\_ day of September 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
Kathleen N. Wohlgemuth, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director